IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 745 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T CORPN - Petitioner(s)

Versus

VRAJLAL N SAVALAIA - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the award dated 17th April 2000

passed by the Labour Court, Junagadh.

2. The respondent who was engaged as a conductor by the petitioner Corporation was found to have committed misconduct of having remained unauthorizedly absent for a period between 28th February 1995 to 12th May 1995. The petitioner, therefore, ordered his dismissal from service. This order of dismissal dated 11.1.96 was challenged by the respondent before the Labour Court by raising dispute. The Labour Court also found that the misconduct was proved against the respondent. The Labour Court was, however, pleased to come to the conclusion that the order of dismissal was disproportionate to the charges proved against the respondent and the order of was therefore set aside. The respondent was ordered to be reinstated in service with continuity and with 60 per cent backwages and punishment of withholding of one increment without future effect was ordered to be imposed.

3. In the facts of the present case, the award of the Labour Court cannot be sustained in its entirety. The respondent had committed misconduct which was proved against him. Directing his reinstatement with 60 per cent

backwages was therefore not proper. The learned advocate for the respondent, however, submits that pursuant to the award passed by the Labour Court, the respondent was actually reinstated in service in the year 2001 and subsequently, at his request he was permitted to voluntarily retire from service on 31st August 2003. He submitted that the respondent was keeping indifferent health on account of which he had to seek early retirement. In view of this development and the petitioner itself has accepted the notice of retirement of the respondent, to revive the order of dismissal would be inequitable. The respondent, however, cannot get away without any punishment. As noted earlier, direction for payment of 60 per cent backwages is wholly untenable and the same is required to be set aside.

4. Accordingly, the direction for payment of 60 per cent backwages is set aside. In addition to setting aside the said direction, it is provided that the respondent will be visited with penalty of withholding of two increments with future effect. Reinstatement with continuity in service is however maintained. The impugned award of the Labour Court is accordingly modified. The petition is allowed to the above extent.

Rule is made absolute accordingly with no order as to costs. It is expected that the outstanding dues of the respondent be settled expeditiously.

(Akil Kureshi, J.)

(vjn)